

**Art Rejections:**

1. The texts of 35 U.S.C. 103(a) cited in the previous office action are hereby incorporated by reference.

2. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al, U.S. pat. No. 6,978,248.

Per claims 1 and 7, Walker discloses a method of sending an electronic mail message to members of a mass audience each connected to a network comprising:

a) creating a plurality of test messages each having a message content identical in each test message and a plurality of characteristics that may vary, each test message varying from all other test messages in at least one of said characteristics (see col 7, lines 6-39 and col 10, lines 17-34);

b) storing said message content and retrieving said message content from storage for inclusion in each test message (col 7, lines 40-43 and col 10, lines 47-53);

c) sending each test message on said network to different members of said mass audience with all of the test messages together being sent to a minority of the members of said audience (col 7, lines 43-45 and col 10, lines 59-67);

d) evaluating feedback as to the effectiveness of each test message (col 7, lines 45-52 and col 11, lines 37-55);

- e) creating a final message based on the evaluation of the feedback (col 7, lines 52-58 and col 8, lines 6-9); and
- f) sending said final message on the network to all members of said audience (see col 8, lines 10-28).

Walker also teaches paying a sub-group of users who participate in the test/survey (see col 5, lines 3-11). Walker however does not explicitly teach employing a sub-group of users for receiving the test message and another group of users who would receive the final message.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize any group or subgroup of users in practicing Walker's invention. The use of a different subgroup of users for testing would have been motivated because it would have allowed business to pretest or conduct survey for their products or services on paid users (see col 5, lines 3-11).

Per claims 2-5, it is noted that a conventional email message comprises different fields including address, date/time and subject.

Per claim 6, Walker teaches randomly selecting users for receiving the test (see col 3, lines 38-44).

Claims 8-20 are similar in scope as that of claims 1-7.

**Response to Amendment:**

3. Applicant's arguments filed on February 21, 2008 with respect to claims 1-20 have been fully considered but are not deemed persuasive.

Applicant alleges that the cited portion of Walker (i.e., col 11, lines 37-55) fails to teach evaluating the feedback as to the effectiveness of each test message.

The examiner disagrees. As set forth in the previous office action, Walker clearly teaches using pre-test message to determine the effective presentation of a product by evaluating the user feedbacks (see col 7, lines 45-52). It is noted that the office action has been revised to further clarify this teachings of Walker.

Applicant also alleges that Walker fails to teach creating a final message based on the evaluation.

The examiner disagrees. Walker clearly teaches creating a new or final message that would convey the most effective presentation of the product based on the evaluation (col 7, lines 52-58 and col 8, lines 6-9).

The examiner also submits that the use of a different subgroup of users for pre-testing the messages would have been obvious in Walker because it would have allowed Walker to

pretest the messages on a group of paid users (see col 5, lines 3-11).

**Conclusion:**

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Viet Vu whose telephone number is 571-272-3977. The examiner can normally be reached on Monday through Friday from 7:00am to 4:00pm. The Group general information number is 571-272-2100. The Group fax number is 571-273-8300. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Flynn, can be reached on 571-272-1915.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>.

Art Unit: 2154

Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Viet Vu/  
Primary Examiner, Art Unit 2154  
4/14/08